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CMR MORTGAGE FUND III, LLC  
7

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11  
12 In re  
13 CMR MORTGAGE FUND III, LLC,  
14 Debtor.

Case No. 09-30802 - TEC

Chapter 11

**FIRST INTERIM APPLICATION OF  
SPECIAL COUNSEL STEIN & LUBIN LLP  
FOR COMPENSATION AND  
REIMBURSEMENT OF EXPENSES**

Date: December 28, 2009

Time: 9:30 a.m.

Dept: 23

1           **TO THE HONORABLE THOMAS E. CARLSON, UNITED STATES BANKRUPTCY  
2           JUDGE:**

3           Stein & Lubin LLP (“S&L”) respectfully submits its First Interim Application For  
4           Compensation And Reimbursement Of Expenses:

5           **I. EMPLOYMENT AND PRIOR COMPENSATION**

6           S&L was appointed as Special Counsel for debtor CMR Mortgage Fund III, LLC  
7           (“Debtor”) in this Chapter 11 case by Order of the Court dated October 29, 2009. Debtor  
8           employed S&L to represent the Debtor in performance of corporate and regulatory matters  
9           including the following: advice and performance of legal services regarding loan workouts,  
10          forbearance agreements, enforcement actions and negotiations relating to mortgage loans in  
11          which the Debtor has an interest; information and direction with respect to state and federal  
12          regulatory matters, including representation in connection with any accusations, investigations or  
13          enforcement actions that may be instituted; and assistance and advice regarding the Debtor’s  
14          rights and obligations toward its investor members.

15          This is the first application for approval of fees filed by S&L as Special Counsel.  
16          This application seeks approval for and payment of fees and costs incurred from March 31, 2009  
17          through October 31, 2009 in the amount of \$57,395.24.

18           **II. CASE STATUS**

19          The Debtor first employed S&L as its corporate counsel in October 2003 for a  
20          variety of purposes including its formation, capitalization, legal compliance, lending operations,  
21          loan enforcements and workouts, and other related matters. Since that time S&L has  
22          continuously represented the Debtor and has accumulated considerable information regarding the  
23          Debtor’s business and transactional dealings. The Debtor filed for bankruptcy on March 31,  
24          2009.

25          In connection with this Application, the Debtor employed S&L to provide legal  
26          services in connection with each of the following four matters, each of which is hereafter referred  
27          to as a “Project.” Included in the following descriptions is an explanation of the importance of  
28          the Project and, where applicable, the complexities involved:

1           1. DIP Financing. S&L assisted the Debtor to design and document a debtor-in-  
2 possession financing program (the “DIP Financing”) to be funded by the Debtor’s issuance of  
3 notes primarily to its own members. Raising this DIP Financing is critical to the Debtor’s ability  
4 to carry out a feasible plan of reorganization because the Debtor must protect and  
5 preserve its properties and loan collateral until they can be sold for reasonable prices. In order to  
6 accomplish this, the Debtor must be able to fund ongoing payments for (i) adequate protection  
7 payments to senior lienholders, (ii) negotiated forbearance payments to other senior lienholders  
8 with whom such forbearances are negotiated (such as the Standstill Agreement described below),  
9 (iii) entitlement costs for land that the Debtor owns (or will own) in order to realize its full value,  
10 and (iv) administrative costs of this bankruptcy proceeding. In addition, the Debtor is compelled  
11 to utilize an unconventional method for raising the DIP Financing, because there is no single bank  
12 or other institutional investor willing to provide the necessary funds. Therefore, the Debtor will  
13 seek to raise the funds from its own members, in relatively small increments from each member,  
14 which constitutes a securities offering that is regulated by both state and federal securities  
15 laws. S&L has prepared a very detailed private placement memorandum (“PPM”), as well as the  
16 loan documentation itself, and the Debtor has been advised how to conduct the offering in  
17 compliance with the private placement exemptions from registration under federal and state  
18 securities laws. The Court has already granted the Debtor’s motion to conduct a private  
19 placement offering in order to raise the DIP Financing, utilizing the offering documents prepared  
20 by S&L.

21           2. Standstill Agreement. S&L negotiated and documented a very complex  
22 standstill agreement with a group of mortgage lenders (referred to as the “Oxford investors”) who  
23 hold senior liens on various real properties that serve as collateral for the Debtor’s own junior  
24 mortgage loans. These senior liens are in default and the Oxford investors are entitled to  
25 foreclosure on their liens, which would extinguish the Debtor’s junior liens and cause a complete  
26 loss of the Debtor’s investments. The Standstill Agreement, if approved by all parties and this  
27 Court, would provide the Debtor with a reasonable opportunity to preserve most of its largest  
28 investments. The Standstill Agreement, as submitted for approval by this Court, addresses the

1 Debtor's and CMR Mortgage Fund II, LLC's aggregate investments of approximately \$45 million  
2 and seven (7) different loans, plus several additional foreclosure properties on which the Oxford  
3 investors hold liens. As the court is aware, the Standstill Agreement is very complex and was  
4 subject to review and re-negotiation by several different Oxford investors and their advisors.

5           3. Governmental Inquiries/Examinations. S&L advised and assisted the Debtor in  
6 connection with regulatory matters and various governmental inquiries and examinations,  
7 including compliance with state and federal securities laws, the California Finance Lenders (CFL)  
8 law, and other matters.

9           4. General Advice and Consultation. S&L has been providing ongoing advice and  
10 consultation, only as and when specifically requested by the Debtor, in connection with the  
11 Debtor's general business operations.

12           S&L has opened two separate billing matters for post-petition work rendered for  
13 work on the above Projects. File No. 1473-0063, which is entitled DIP Financing (Funds II and  
14 III), includes only the legal work related to the DIP Financing. File No. 1473-0062, which is  
15 entitled CMR Funds II and III (Chapter 11), includes only the legal work related to the DIP  
16 Financing. S&L File No. 1473-0062, which is entitled "CMR Funds II and III (Chapter 11)",  
17 includes all legal work relating to the other three Projects listed above. All of the itemized post-  
18 petition statements for both billing matters are attached to the Declaration of Mark D. Lubin. For  
19 the reasons described below, each of these billing matters was opened as a joint billing matter for  
20 both the Debtor and a related mortgage fund, and the charges should be borne equally by the  
21 Debtor and that other fund.

22           S&L has been retained as special counsel for both the Debtor and an affiliated  
23 mortgage investment fund, CMR Mortgage Fund II, LLC ("Fund II"), which is the debtor in  
24 another bankruptcy case pending before this Court entitled *In re CMR Mortgage Fund II, LLC*,  
25 Case No. 09-30788. The Debtor and Fund II are co-lenders in many of the same mortgage loans,  
26 and the legal services rendered by S&L in connection with the four Projects described above,  
27 which are itemized in the statements attached to the Declaration of Mark D. Lubin, were rendered  
28 for the benefit of *both* the Debtor and Fund II. Both entities had substantially the same needs for

1 the same legal services: (1) both the Debtor and Fund II require DIP Financing in order to protect  
2 and preserve their respective assets, for which purpose both the Debtor and Fund II will utilize  
3 virtually identical offering documents prepared by S&L; (2) both the Debtor and Fund II are  
4 parties to the same proposed Standstill Agreement, and are being treated equally under it; (3)  
5 both entities are subject to regulation and examination by reason of their activities that are  
6 governed by the securities laws and by the California CFL law; and (4) both entities are engaged  
7 in the same business with substantially the same borrowers, and (thus far, at least) all consultation  
8 and advice rendered by S&L was applicable and beneficial to both Debtor and Fund II. Because  
9 all of the work performed by S&L on the above Projects was virtually identical for both the  
10 Debtor and Fund II and benefitted both of them, and with the Debtor's approval, all billable time  
11 and costs advanced on each Project were billed to a single matter (as described above) with the  
12 intention that the charges billed to each matter would be borne equally by the Debtor and Fund  
13 II. The total amount of fees and costs incurred by the Debtor and Fund II are \$114,790.48, as  
14 shown in Exhibit A to the Declaration of Mark D. Lubin.

15                 Based on the foregoing, the attorneys' fees and costs for each Project that are  
16 summarized below and for which payment is requested each represent exactly one-half (50%) of  
17 the total charges reflected on the joint billing statements attached to the Declaration of Mark D.  
18 Lubin.

19 **III. PROJECTS**

20                 Attached as Exhibit A to the Declaration of Mark D. Lubin are the statements for  
21 legal services provided by S&L from March 31, 2009 through October 31, 2009. Counsel has  
22 reviewed in detail each fee entry and description contained on the statements, and here provides a  
23 summary, for each Project, of the total billable hours and amounts charged for work on that  
24 Project. Each fee entry and description in the itemized statements attached to the Declaration of  
25 Mark D. Lubin is included in one of the Projects below.

26                 In addition, in order to summarize the particular tasks performed for each Project,  
27 each line item in the itemized statements attached to the Declaration of Mark D. Lubin has been  
28 designated with a letter from "A" through "G." Each such letter serves as a task code to indicate

1 that the work described in that entry consisted of one of the following tasks:

2           A - Communications (both oral and written) with the Debtor itself, internally  
3 among attorneys within S&L, and with the Debtor's other legal counsel and accountants for  
4 consultation, advice and information gathering;

5           B - Drafting and revising documents;

6           C - Reviewing client files;

7           D - Negotiations with opposing parties and their counsel;

8           E - Attending to governmental filings (SEC, California Dept. of Corporations,  
9 etc.);

10          F - Legal Research; and

11          G -Attending to Bankruptcy court filings, appearances at court hearing, preparing  
12 fee applications.

13          The following billing summary for each of the Projects includes a breakdown of  
14 the total time and charges incurred for each of these tasks for that Project.

15          1. DIP Financing.

16          Allocation of tasks for this Project (see task codes above):

	No. Hours	Fees
A -	10.5	\$6,275
B -	37.2	\$16,527.50
C -	4.0	\$1,203
E -	2.75	\$1,165
F -	1.3	\$550
G -	2.6	\$1,505

24          Total Hours for this Project: 58.35

25          Total Fees for this Project: \$27,225.50

26          2. Standstill Agreement.

27          Allocation of tasks for this Project (see task codes above):

No. Hours	Fees
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1                   A -     8.2               \$4,218  
2                   B -     16                \$8,880  
3                   C -     2.2               \$1,327  
4                   D -     15.6              \$9,824

5                   Total Hours for this Project: 42

6                   Total Fees for this Project: \$24,249

7                   3. Governmental Inquiries/Examinations.

8                   Allocation of tasks for this Project (see task codes above):

9                   No. Hours      Fees  
10                  A -     4.2               \$2,478  
11                  B -     0.5               \$140  
12                  C -     1.3               \$616  
13                  F -     1.2               \$737

14                  Total Hours for this Project: 7.2

15                  Total Fees for this Project: \$3,971

16                  4. General Advice and Consultation.

17                  Allocation of tasks for this Project (see task codes above):

18                  No. Hours      Fees  
19                  A -     4.4               \$2,596  
20                  Total Hours for this Project: 4.4  
21                  Total Fees for this Project: \$2,596

22                  **IV. BILLING SUMMARY**

23                  Between March 31, 2009 and October 31, 2009 S&L devoted a total of 111.95  
24 hours of professional time in the performance of the services described above. S&L's billing  
25 statements/invoices, attached as Exhibit A to the Declaration of Mark D. Lubin, identify the  
26 individuals who performed specific services by initial, and can be summarized as follows:

Name	Hourly Rate	Total Hours	Total Fees
MDL: Mark D. Lubin	\$590	82.65	48,763.50

1	RBC: Richard B. Caine	\$470	3.25	1,527.50
2	AIB: Audrey Baker	\$370	.85	314.50
3	KBR: Brad Rogerson	\$315	.55	173.25
4	EYC: Eugene Chung	\$295	24.05	7,094.75
5	JPG: Justin Gurvitz	\$280	.60	168.00
	<b>SUB-TOTAL</b>	<b>N/A</b>	<b>111.95</b>	<b>58,041.50</b>
	<b>ADJUSTMENT</b>	<b>N/A</b>	<b>N/A</b>	<b>-826.50</b>
	<b>TOTAL</b>	<b>N/A/</b>	<b>111.95</b>	<b>57,215.00</b>

6  
7                   In addition to the foregoing fees, S&L has expended the sum of \$180.24 for costs  
8 and expenses from March 31, 2009 through October 31, 2009. A summary of these costs is as  
9 follows:

<b>Costs</b>	<b>Amount</b>
Photocopy Charges	111.00
Online Research (Pacer)	1.16
Conference Calls	89.98
<b>Sub-Total</b>	<b>\$202.14</b>
<b>Adjustment</b>	<b>-21.90</b>
<b>Total</b>	<b>\$180.24</b>

10                   S&L respectfully requests that the reasonable value of its services from March 31,  
11 2009 through October 31, 2009 is \$57,215.00. Costs advanced by S&L from March 31, 2009  
12 through October 31, 2009 total the sum of \$180.24. All services for which compensation is  
13 requested were rendered pursuant to the performance of S&L of the duties authorized in the Order  
14 of the Court for its Appointment as Special Counsel for Debtor. None of the services were  
15 rendered with respect to any other matter. This Application and the Exhibits attached to the  
16 Declaration of Mark D. Lubin represent the total amount of compensation sought by S&L, net of  
17 adjustments made to eliminate improper or duplicate charges.<sup>1</sup> By this Application, S&L seeks  
18 both allowance and approval of payment of all attorneys' fees and costs incurred by S&L on  
19 behalf of Debtor from March 31, 2009 through October 31, 2009.

20                   **V. RULE 2016(B) STATEMENT**

21                   No compensation previously received by S&L has been shared with any other  
22 person and no agreement or understanding exists between S&L and any other person for the

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27                   <sup>1</sup> The sum of \$826.50 has been deducted from the invoices to reflect the Court approved billing  
28 rate of \$580.00 for Mark Lubin and the sum of \$21.90 has been deducted from the invoices to  
reflect copy charges of \$.20 per page.

1 sharing of compensation received or to be received for services rendered in or in connection with  
2 this case, except with the regular members and associates of S&L, and attorneys of counsel to  
3 S&L. S&L neither represents nor holds any interest adverse to Debtor, its estate, or to creditors  
4 herein with regard to any of the matters referred to herein, with the exception of an outstanding  
5 balance for fees and costs owed by the Debtor to S&L which was disclosed in the Application for  
6 Appointment of Stein & Lubin LLP as Special Counsel for Debtor.

7 **VI. CONFERENCES, HEARINGS, AND JOINT REPRESENTATION OF DEBTOR**

8 Drafting the standstill agreement and DIP Financing agreement are critical to  
9 Debtor's ability to effectively reorganize and pay its creditors. To insure that Debtor received the  
10 best advice and representation from its lawyers required attorneys from S&L to meet with the  
11 Debtor's representatives and the Debtor's counsel to discuss and agree on strategy, and consider  
12 issues that arise in the course of this bankruptcy, and such conferences, as are shown on the S&L  
13 billing statements, consisted of: discussions of analysis/strategy of the case; discussion of action  
14 items in connection with the Projects, including the DIP Financing and standstill agreements;  
15 general corporate advice concerning audit matters; discussion of and action items regarding  
16 compliance requirements with state agencies; general corporate advice related to the Debtor's  
17 business operations, and other related action items.

18 Mark D. Lubin is a corporate lawyer primarily responsible for providing legal  
19 advice with respect to the Projects, including the drafting and preparing the of the standstill and  
20 DIP Financing agreements. Richard B. Caine, Audrey Baker, Justin Gurvitz, Brad Rogerson, and  
21 Eugene Chung are transactional lawyers who assisted in the transactional work regarding the  
22 Projects, and performed certain limited services when it was determined that they could do so  
23 competently and at a lower billing rate than Mr. Lubin.

24 Where billing statements include intra-firm conferences between attorneys, the  
25 conferences consisted of one of the following: instruction from one professional to another  
26 professional; analysis and strategy for the Project; and discussion of action items regarding the  
27 DIP Financing and the Standstill Agreement.

1      **VII. PHOTOCOPIES**

2            S&L generally charges \$0.25 per page for copies to its clients. For the current  
3 interim fee applications, however, S&L is requesting \$0.20 per page, and the amounts listed on  
4 the invoices for the costs have been adjusted to reflect a charge for \$0.20 per page.

5      **VIII. PREPARATION OF THIS FEE APPLICATION**

6            In December 2009, S&L estimates that it has spent approximately 7 hours on  
7 preparation of this fee application, at an approximate expense of \$2,700.00. As the present  
8 application for interim compensation covers only the period ending October 31, 2009, the fees  
9 incurred during preparation of this application, and for the November 2009 period, will be sought  
10 in S&L's next application for interim compensation.

11     **IX. COMPLIANCE WITH GUIDELINE NUMBER SEVEN**

12           Attached as Exhibit B to the Declaration of Mark D. Lubin is a copy of a letter to  
13 Debtor in compliance with Guidelines for Compensation and Expense Reimbursement of  
14 Professionals and Trustees, Guideline Number Seven.

15           WHEREFORE, S&L prays that this Court enter its Order as follows:

- 16        1. Approving and allowing reasonable attorneys' fees incurred by S&L in its  
17 representation of Debtor from March 31, 2009 through October 31, 2009,  
18 in the sum of \$57,215.00;
- 19        2. Approving and allowing reasonable costs incurred by S&L in its  
20 representation of Debtor from March 31, 2009 through October 31, 2009,  
21 in the sum of \$180.24;
- 22        3. Authorizing and directing Debtor to pay \$57,395.24 to S&L; and
- 23        4. Such other and further relief as the Court deems just and proper.

24      Dated: December 8, 2009

STEIN & LUBIN LLP

26           By: /s/ Dennis D. Miller

27           DENNIS D. MILLER  
Attorneys for Debtor  
CMR MORTGAGE FUND II, LLC